

FILED

NOV 20 2006

RICHARD W. WIXING  
CLERK U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

PERNELL EVANS,

No. C 04-0098 SI

Related Case C 04-0099 SI

Plaintiff,

**SPECIAL VERDICT**

v.

FEDEX CORPORATION,

Defendant.

We, the jury in the above entitled action, find the following for our special verdict:

**DISPARATE TREATMENT**

**Question No. 1:** Did plaintiff Pernell Evans prove, by a preponderance of the evidence, that defendant FedEx subjected plaintiff to an adverse employment action, as defined in these instructions?

Yes ☒ No ☐

If the answer to Question No. 1 is "no," please proceed to Question No. 5. If the answer to Question No. 1 is "yes," please proceed to Question No. 2.

**Question No. 2:** Did plaintiff Pernell Evans prove, by a preponderance of the evidence, that his race was a motivating factor for defendant FedEx's taking an adverse employment action against him?

Yes ☒ No ☐

If the answer to Question No. 2 is "no," please proceed to Question No. 5. If the answer to Question No. 2 is "yes," please proceed to Question No. 3.

**Question No. 3:** Did defendant FedEx prove, by a preponderance of the evidence, that its actions were also motivated by a lawful reason?

Yes ☐ No ☒

If the answer to Question No. 3 is "no," please proceed to Question No. 5. If the answer to Question No. 3 is "yes," please proceed to Question No. 4.

**Question No. 4:** Did defendant FedEx prove, by a preponderance of the evidence, that it would have taken the same actions even if plaintiff's race had played no role in FedEx's decision?

Yes \_\_\_\_\_ No X

Please proceed to Question No. 5.

**RETALIATION**

**Question No. 5:** Did plaintiff Pernell Evans prove, by a preponderance of the evidence, that he engaged in activities protected under federal law, such as complaining of racial discrimination in employment?

Yes X No \_\_\_\_\_

If the answer to Question No. 5 is "no," please go to Question 8. If the answer to Question No. 5 is "yes," please proceed to Question No. 6.

**Question No. 6:** Did plaintiff Pernell Evans prove, by a preponderance of the evidence, that defendant FedEx subjected plaintiff to an adverse employment action, as defined in these instructions?

Yes X No \_\_\_\_\_

If the answer to Question No. 6 is "no," please go to Question 8. If the answer to Question No. 6 is "yes," please proceed to Question No. 7.

**Question No. 7:** Did plaintiff Pernell Evans prove, by a preponderance of the evidence, that his protected activity was a substantial or motivating factor in causing defendant FedEx to take the adverse employment action?

Yes X No \_\_\_\_\_

Please go to Question No. 8.

**Question No. 8:** [Only if you answered Question No. 3 or Question No. 4 "no," or if you answered Question No. 7 "yes," then answer this question and the next question] What amount of damages did plaintiff Pernell Evans prove, by a preponderance of the evidence, was caused to him by FedEx's adverse employment action(s)?

\$ 475,000

**Question No. 9:** Did plaintiff Pernell Evans prove, by a preponderance of the evidence, that defendant FedEx's conduct toward him was malicious, oppressive or in reckless disregard of his rights, as those terms are defined in these instructions?

Yes X

No \_\_\_\_\_

Dated: 11/20/06

Melvin Nery  
FOREPERSON